

STATE NEVADA.

ENGINEER'S OFFICE.

Carson City.

January 4th, 1918.

Subject: Pine Creek

4801

In replying, refer to

Mr. Lorenzo D. Greel,
Special Supervisor,
U.S. Indian Service,
Hend, Nevada.

Dear Sir:-

I have your letter of the 2nd inst. relative to the application made by Mr. L. P. Clar on behalf of Alec Mike, for the waters of Pine Creek. I find the application was filed on December 27th last, and returned the same day to the applicant, c/o Mr. Clar, Manhattan, Nevada, for correction. The corrections necessary were relative to the location of the point of diversion, which this office requires to be either located within a 40 acre tract or tied by course and distance to a ~~xxx~~ section corner of the Government survey. As you are aware the law allows 60 days from the date ~~the~~ the application is returned within which to correct same and it becomes mandatory for this office to cancel same if not received within that time. I judge, however, from Mr. Clar's letter dated December 24th and received with the application, wherein he states that he is unable to give the point of diversion at this time, but will amend the application after making a survey, that he intends to see that it is corrected in due time.

When corrected application is received, we can proceed with the publication, etc. as required by law regardless of the matter mentioned in your letter relative to his acquisition of land.

Trusting this information is satisfactory, I am

Yours very truly,
J. G. SCRUGGER,
State



STATE OF NEVADA
ENGINEER'S OFFICE

J. G. SCRUGHAM,
STATE ENGINEER
D. G. McBRIDE,
DEPUTY STATE ENGINEER
KEYMOUR CAGE,
DEPUTY STATE ENGINEER
H. M. PAYNE,
DEPUTY STATE ENGINEER

CARSON CITY

January 4th, 1919

Subject: Pine Creek

In replying, refer to 4801

Mr. Lorenzo D. Creel,
Special Supervisor,
U.S. Indian Service,
Reno, Nevada.

Dear Sir:-

I have your letter of the 2nd inst. relative to the application made by Mr. L. F. Clar on behalf of Alec Mike, for the waters of Pine Creek. I find the application was filed on December 27th last, and returned the same day to the applicant, c/o Mr. Clar, Manhattan, Nevada, for correction. The corrections necessary were relative to the location of the point of diversion, which this office requires to be either located within a 40 acre tract or tied by course and distance to a section corner of the Government survey. As you are aware the law allows 60 days from the date the application is returned within which to correct same and it becomes mandatory for this office to cancel same if not received within that time. I judge, however, from Mr. Clar's letter dated December 24th and received with the application, wherein he states that he is unable to give the point of diversion at this time, but will amend the application after making a survey, that he intends to see that it is corrected in due time.

When corrected application is received, we can proceed with the ~~appropriation~~ ^{application}, etc. as required by law regardless of the matter mentioned in your letter relative to his acquisition of land.

Trusting this information is satisfactory, I am

Yours very truly,
J. G. SCRUGHAM,
State Engineer.

By *H. M. Payne* Deputy.

1908

LIST OF EXHIBITS SUBMITTED WITH REPORT ON PINE CREEK.

- EXHIBIT "A", Transcript of Testimony,
" "B", Protest against Hooper,
" "C", Certificate of Water Appropriation
of United Cattle & Packing Co.,
and maps,
" "D", Transcript of Record of State
Engineer's Office for the waters
of Pine Creek,
" "E", Photographs illustrating subjects
relating to Pine Creek and Indians,
" "F", Cultural map of the Lands of Spud,
Fisherman, and Alec Mike, (one
copy only.)
" "G", Letters to State Engineer and others.
Note: For further information see
office files no. 31.

DEPARTMENT OF THE INTERIOR
UNITED STATES INDIAN SERVICE

November
Twenty Sixth
1918

REPORT OF INSTALLATION OF WEIR TO DETERMINE THE FLOW
OF FINE CREEK, WYB COUNTY, NEVADA.

In re Case No. 4376:

UNITED CATTLE & PACKING COMPANY,

-vs-

TIM HOOPER.

COL. L. A. Darrington:
Special Indian Agent in Charge,
Reno, Nevada.

My dear Colonel:

I beg leave to submit the following report on the above named subject and others incidental thereto concerning land and water matters involving Tim Hooper and other Shoshone Indians, and their relations to the United Cattle & Packing Co., of Goldfield, Nevada.

This is a continuation of the case growing out of an informal hearing on the water application of Tim Hooper, an Indian, to appropriate certain waters of Fine Creek, situated in T. 11 N. R. 46 E. N. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of Sec. 21, under date of March 27, 1917, and protested by United Cattle & Packing Company, under date of April 24, 1917, which was heard June 20, 1917, at Tonopah, Nevada, before James W. Scrugham, State Engineer. A transcript of the testimony offered on that occasion is given in full in Exhibit "A", submitted with this report.

In order to properly understand this case it will be necessary to begin at the beginning of Tim Hooper's operations in an effort to secure land on the Public Domain. A great deal of space must be necessarily consumed in making as full an explanation as I deem necessary in order

(2)

that a complete history of the whole situation may be properly placed before you and have a place in the files in your office.

Under date of November 30th, 1912, Mr. L. F. Clar, a surveyor of Manhattan, Nevada, wrote special agent Asbury enclosing the application of Tim Hooper for land on the North Fork of Meadow Creek supposed to be in Section 27, Tp. 10, N. E. 45 E., apparently inside the Toibe Forest Reserve. On December 12th, 1912, Mr. Asbury forwarded the same to the Forest Supervisor at Austin, Nevada. Also, on the same date Mr. Asbury replied to Mr. Clar's letter of November 30th, advising him that Hooper's application had been so filed, stating that the Forest Supervisor would hardly approve it unless he makes his affidavit true by either settling upon the said land, or improving the same. There seems to have been some question raised in regard to his settlement which does not appear in the files.

On December 24th, 1912, Mr. Clar again writes Special Agent Asbury in reply to his letter of the 12th stating that the applicant Hooper is afraid that if he undertakes to improve the land applied for before he secures it that some parties will drive him off and Clar states that he believes his fears are well grounded. Clar also states that the Forest Supervisor has notified Hooper that his application is on the file. Clar asks advise and suggestions from Special Agent Asbury as to some possible remedy to avoid Hooper's settling on the land until his application is granted.

Under date of December 26th, 1912, Special Agent Asbury replies to Clar stating that Hooper has already made affidavit that he has taken up his residence or made improvement on the land applied for in Meadow Canyon, and also states that he feels quite sure that the Forest Officials cannot report favorably on his application until he has taken steps to make that affidavit true, and his failure to do so may prejudice his chances to get this or any other land. He also states in this letter that it seems to him that Hooper's fears are unfounded, as his application is already in and would take precedence over any other that might be made subsequently. He also assures him that Hooper had a right to apply for this land and any violence or intimidation used to prevent him would be the subject of careful inquiry and prosecution if necessary.

Under date of February 5th, 1913, Special Agent Asbury writes Hooper that he should take up his home on this land and either get someone to survey it or find out the cost of the

survey and he would tell him then if the Reno Office could handle it. He also assures him that as his application was already in no one could get ahead of him. Sometime before this date and the date of November 1, 1914, Tim Hooper appeared to have made a visit to the Reno Office, during the absence of Mr. Asbury. Under date of November 6th, 1914, Mr. Asbury writes Hooper that Mr. Van Emon had called his attention to Hooper's visit. Sometime previous to this date Hooper seems to have changed his mind and brought with him a map of land outside of the National Forest about eight or ten miles from the land named in his original application, which, since I have visited the place was undoubtedly the land which he afterwards filed upon. This filing has led to all this trouble and expense; the reason of which will be developed in this report from time to time. In this letter, Special Agent Asbury sends Hooper two application forms, one for himself and one for his wife.

The land indicated was undoubtedly the land Hooper now occupies, a large part of which was then under fence and improved, growing a crop of wild hay through the efforts of either the United Cattle & Packing Company, or their predecessors and a part of what is known as the "Pine Creek Ranch".

In the letter referred to above appears the first mention of water which Hooper seems to have spoken of to Mr. Van Emon, as he is advised in this letter that there seems to be a ranch that uses water out of the same creek and he is advised that it is not probable that he would be permitted to divert water above this land except when there is a surplus, but he might be permitted to use waste water below it, if there was water allowed to pass. He was also advised in this same letter how to make his statements in reference to this water in order that the Reno office might apply properly to the State Engineer. He also advised that the Special Agent might be able to make a trip and visit the land during this winter and request Hooper to inform him of the condition of the roads and etc.

On December 14th, 1914, Hooper forwards his application to the Reno Office for the SW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ Sec. 21 and NW $\frac{1}{4}$ of NW $\frac{1}{4}$, Sec. 22, Tp. 11, R. 46 E. M. D. B. & M. for Indian Allotment Serial No. 08984 which was allowed by the Carson Land Office on July 22d, 1915. In the meantime Hooper had notified the Forest Supervisor at Austin, Nevada, that he would abandon the land previously applied for and

apply for other land.

Under date of November 16th, 1914, Forest Supervisor, Thomas J. Collins, writes Special Agent Asbury reviewing the Hooper case stating that Hooper writes him that he does not want the land and he, Collins, will recommend to the District Forester that the case be closed. It appears that it was never possible for Special Agent Asbury to visit Hooper nor inspect the land he filed upon or the source of the water he desired.

About this time Mr. E.H. Atkinson of the law firm of Humphrey & Atkinson, Tonopah, Nevada, appears to have called at the Reno Office during the absence of Special Agent Asbury and raised the question with the Clerk as to whether or

not a half breed Indian could receive an allotment upon the public lands. This visit was the occasion which called for several letters discussing this subject. If at this time, Mr. Atkinson, who later on appeared as attorney for the United Cattle & Packing in the informal hearing in re case No. 4376 held in Tonopah before the State Engineer on June 20th, 1917, had been frank at the outset and stated the case of his client's directly, naming Tim Hooper and his client setting forth the situation in full without resorting to the round about course, which appears to appeal to the average lawyer, and had then arranged with this office for a representative of it to meet with one from his company and Tim Hooper on the ground where the situation could have been thoroughly understood by all, I firmly believe that an arrangement could have been made between the company and Hooper for him to relinquish his land for a valuable consideration and take up other land of which there was plenty in the neighborhood, what has now grown to be a very serious and complicated matter, might have been settled once and for all without any hard feelings and all the expense incurred up to the present and which may be incurred later on by all parties, would have been saved.

The Pine Creek Ranch has changed hands quite often; it consists of several parcels or tracts some of which are quite widely separated. It appears through the oversight of someone connected with the management of the affairs of either the United Cattle & Packing Co., or its predecessors that it was the first annual proof of a Desert Land Entry made by one Kelly covering the land now held by Hooper was not made; on account of this failure the said Desert Land Entry was cancelled by the land office on August 22d, 1915, for and on account of the failure of Kelly or his assigns to make the said first annual proof. The date of Kelly's original filing was September 12th, 1911, therefore the land on account of

this cancellation and the land was actually vacant when Hooper filed upon the same. Beyond a doubt a previous owner of this ranch, one Marsh of Tonogah, who knew of this condition concerning this land instigated Hooper to file upon it and was able to give Hooper an accurate description in order that there was no mistake in his application. Marsh undoubtedly has a grudge against the present company and advised Hooper to file upon the water with the hope that both land and water could be secured through the help of the department and the Reno Indian office against any protest made by the United Cattle & Packing Co. I suspected the enmity of Marsh when I visited this Section early in June, 1917, with the Deputy State Engineer and Marsh. My suspicions have been verified by later developments. Apparently much of this land has been under cultivation and use since 1911 and possibly before. All, or practically all of it was under fence when Hooper filed on it. All of one forty and a part of another is sub-irrigated from irrigation and waste water applied to the company's land, which lie above the lands filed upon by Hooper. This land appears to be the best natural hay meadow covered by the waters of Pine Creek and naturally the company feels the loss of what they considered theirs very severely.

The land lies quite near the buildings of the Company. Its real value is of minor importance when compared with the constant menace to their interests and peace of mind. Should Hooper dispose of it to an enemy of the Company, almost anything might start conditions which would soon grow to be intolerable and unbearable. The families of "Spud", "Fisherman" and "Alec Mike," especially the latter are already suffering on account of Hooper's entanglement with the company. The application of Alec Mike for a part of the Waste Water of Pine Creek has already been protested by the Company for self protection on account of their controversy with Hooper. The increased activity of the Company combined with the extreme shortage of water the past season has deprived Alec of practically all the water he was using and seriously curtailed that used by Spud and Fisherman. At the same time the company has no grievance against these latter Indians but in its efforts to protect its water supply, they suffer from shortage on account of the volume of Waste Water from which they derive a supply, being seriously curtailed.

The lands of Alec join those of the company and those of Spud and Fisherman join Alec's. All depend upon Waste Water for irrigation after it leaves the boundaries of Pine Creek Ranch. Hooper cannot use any of this waste as the most of the Pine Creek Ranch slopes away from the land claimed by him. His source of supply being through sub-irrigation. The company applied for permission from the State Engineer to change a diversion point of a part of the waters of Pine Creek to other lands after Hooper's application for land had been approved and have diverted it from the lands claimed by him as far as possible. Hooper is

apparently making his fight on the grounds that the water which had been used to develop the land he claims should not be diverted but he still be allowed to apply the water as previously used.

The United Cattle & Packing Co. protested the application of Tim Hooper for a portion of the waters of Pine Creek under date of April 24th, 1917, and an informal hearing was held before the State Engineer at Tonopah, Nevada, June 20th, 1917; and by your request I represented you on behalf of Hooper. An official transcript of the proceedings is submitted herewith marked Exhibit "A". The decision of the State Engineer was that a suitable wier should be installed in Pine Creek at the expense of the government in order that the flow of the stream might be accurately determined. After this can be differently known, his intention undoubtedly is to call for an accurate survey of the lands of the Pine Creek Ranch and adjust the water to which it is legally entitled, and if a surplus is found to exist Hooper would have been entitled to it.

Upon my return from the hearing I requested of Mr. H. W. Deitz, Superintendent of Irrigation of this district funds for the purchase of materials to install this wier, which request was allowed, and I proceeded to get bids for material. I notified the Verdi Lumber Co., at Tonopah, Nevada, that its bid was accepted and to send the bill to Mr. Deitz at Salt Lake City, holding the material until such time as the Pine Creek Ranch employees could haul it to the ranch, which service had been kindly offered by Mr. Ira Murdoch, the Company's manager. In the latter part of October I met Mr. Murdoch in Reno and we agreed to meet in Tonopah or Goldfield, and go to the ranch and install the wier. He stated that the lumber would be in readiness upon our arrival. I left Yerington, Nevada, October 29th for Goldfield, when I arrived there the following day I met Mr. Murdoch and arranged for the trip. We left Goldfield for Pine Creek Ranch by auto on the morning of October 31st, arriving there late in the evening. Early the next morning I met Alec Mike, Spud, Fisherman and Tim Hooper at the ranch house. I explained to them the decision of the State Engineer and what we were about to do, stating at the same time that this work was being done on account of the controversy between Tim Hooper and United Cattle & Packing Co., for the purpose of determining the amount of water in Pine Creek which could best be done by means of the structure he proposed to install. That while there had been no trouble between Alec Mike, Spud and Fisherman and the United Cattle & Packing Co., yet as they had made applications for water from Pine Creek, and were using its waters after they had passed the boundaries of the Pine Creek Ranch, they were therefore vitally interested. They readily volunteered to work without pay.